

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0380P
Sales and Use Tax
For the Years 1998-2000

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ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer manufactures concrete pipes, culverts, related products, and large wall and roof sections for commercial construction. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. A telephone hearing was held on October 28, 2003. This Letter of Findings results.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer argues that its deficiency in tax payments was not due to a willful intent to disregard the law. The taxpayer cited its 1997 centralization of tax reporting functions, establishment of a tax department, and 1997 institution of a new software system to report sales and use taxes as evidence that it attempted to pay the appropriate amount of sales and use tax to Indiana. These changes in the taxpayer's practice did not, however, keep the taxpayer from failing to collect and remit sales tax on certain sales without valid exemption certificates or failing to remit accrued use tax. The taxpayer's inattention to these duties constitutes negligence.

FINDING

The taxpayer's protest is denied.

KMA/JMM/JMS--033010